

the interconnection requirements of Section 251, which specifically incorporates Section 252.<sup>46</sup> Therefore, to fulfill its statutory mandate, the Commission must adopt regulations that implement the interconnection rate requirements of Sections 251 *and* 252.

Moreover, the pricing standards of Section 252(d) are merely particular elements of the more general interconnection rate requirements set forth in Section 251. Section 252(d)(1) identifies the factors that a State commission must consider when determining the just and reasonable rate for the interconnection of facilities and equipment "for purposes of subsection (c)(2) of Section 251" and the interconnection of network elements "for purposes of subsection (c)(3)." Likewise, Section 252(d)(2) identifies the factors that a State commission must consider when determining whether an incumbent LEC has provided reasonable compensation in compliance with Section 251(b)(5). Thus, the pricing standards of Section 252(d) are inextricably linked to the interconnection requirements of Section 251, including the Commission's regulations.

*c. The Commission's Implementation of Interconnection Regulations Will Not Interfere With Private Negotiations, but Rather Facilitate Equitable Interconnection Arrangements.*

The LECs argue that the Commission cannot adopt mandatory federal interconnection requirements because Section 252(a)(1) of the 1996 Act allows parties

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<sup>46</sup> 47 U.S.C. § 251(c)(2)(D).

to enter into privately negotiated interconnection arrangements.<sup>47</sup> This argument is based on a false premise -- that federal interconnection requirements would somehow preclude private interconnection negotiations. Section 252(a)(1) makes clear that parties may continue to enter into binding interconnection arrangements "without regard to the standards set forth in subsections (b) and (c) of [S]ection 251." Thus, the Commission's implementation of federal interconnection requirements will not interfere with the parties' right to enter into private interconnection arrangements on whatever terms they negotiate, so long as neither party unilaterally refuses to comply with a provision of Section 251 or 252.

In order to be effective, the new federal interconnection requirements must apply to all LEC-CMRS arrangements. Although several parties argue that the requirements of the 1996 Act do not apply to existing agreements,<sup>48</sup> Section 252(a)(1) explicitly requires that all interconnection agreements negotiated before the date of enactment of the 1996 Act be submitted to State commissions for review. Such a review process would be unnecessary if Congress did not intend for the 1996 Act to have some effect on these existing agreements. Accordingly, the Commission should clarify that, if one party is unsatisfied with the existing interconnection agreement, it

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<sup>47</sup> USTA Comments at 15; GTE Comments at 10; National Telephone Cooperative Association ("NTCA") Comments at 5-7; NYNEX Comments at 6; Bell Atlantic Comments at 5.

<sup>48</sup> Pacific Bell Comments at 96.

may seek State commission arbitration in accordance with Section 252(b)(1). Of course, if both parties are satisfied with the existing agreement and do not want to renegotiate its terms consistent with the requirements of the 1996 Act, the State commission should review the agreement for the sole purpose of ensuring that it is in the public interest and does not discriminate against third parties.

*d. The 1996 Act Explicitly Authorizes the Commission to Mandate Bill and Keep Arrangements.*

The LECs concede, as they must, that the 1996 Act permits bill and keep arrangements, but they argue that neither the Commission nor the states can mandate bill and keep. In the LECs' view, Section 252(d)(2)(B)(i) merely preserves the right for parties themselves to adopt bill and keep arrangements.<sup>49</sup> The LECs' strained interpretation of Section 252(d)(2)(B)(i) renders the provision superfluous, since parties already have the right, pursuant to Section 252(a)(1), mutually to waive any federal interconnection requirement by entering into a private interconnection agreement. A statutory provision should always be presumed to have some effect, however, rather than being interpreted in a manner that renders it utterly superfluous.<sup>50</sup>

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<sup>49</sup> Pacific Bell Comments at 94; GTE Comments at 36; Bell Atlantic Comments at 6; SBC Comments at 8.

<sup>50</sup> See *American Radio Relay League v. FCC*, 617 F.2d 875, 879 (D.C. Cir. 1980) (statute should be construed to give effect to all of its provisions so that no provision is superfluous).

Section 252(d)(2)(B)(i) explicitly recognizes that bill and keep is a legitimate form of mutual compensation.<sup>51</sup> Even if this provision were not intended to authorize the Commission to implement bill and keep for LEC-CMRS interconnection, nothing in the 1996 Act precludes the Commission from implementing bill and keep to the extent such a rate structure is consistent with the principle of mutual compensation. As New Par and various other commenters have demonstrated, bill and keep reasonably approximates the LECs' incremental cost of providing interconnection to CMRS providers.<sup>52</sup> Thus, the Commission can mandate bill and keep consistent with Section 252(d)(2)(B)(i).

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<sup>51</sup> Since the 1996 Act confirms that bill and keep arrangements are an acceptable form of mutual cost recovery, there are no grounds for preventing the Commission from adopting a bill and keep rate structure for LEC-CMRS interconnection.

<sup>52</sup> See 47 U.S.C. § 252(d)(2)(A)(ii).

**New Par**  
**Reply Comments in CC Dkt. No. 95-185**  
**Filed March 25, 1996**

### **III. APPLICATION OF THESE PROPOSALS**

One party seeks to limit the application of the Commission's interconnection rate structure to personal communications services ("PCS") providers while excluding cellular carriers.<sup>53</sup> There is no basis for such an arbitrary distinction. First, cellular carriers have been paying excessive interconnection rates and have not been receiving mutual compensation. Second, PCS providers will be directly competing with cellular carriers and therefore they should not be given an unfair advantage in this proceeding.<sup>54</sup> Third, the principle of regulatory parity requires that the Commission afford all CMRS providers the protection of federal interconnection regulation.<sup>55</sup> This principle is reflected in the 1996 Act, which provides that *all* telecommunications carriers, including CMRS providers, are entitled to interconnect with incumbent LEC

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<sup>53</sup> Sprint Corporation Comments at 2-6.

<sup>54</sup> GSA Comments at 18-19.

<sup>55</sup> The Commission has recognized that there is "no distinction between a LEC's obligation to offer interconnection to Part 22 licensees and all other CMRS providers, including PCS providers." Implementation of Sections 3(n) and 332 of the Communications Act, *Second Report and Order*, 9 FCC Rcd 1411, 1497 (1994).

facilities "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."<sup>56</sup>

Another party appears to argue that the Commission's LEC-CMRS interconnection regulations also should apply to non-facilities based CMRS resellers.<sup>57</sup> In order to resolve any ambiguity on this issue, the Commission should clarify that its interconnection rate requirements apply only to facilities-based CMRS providers and not resellers. The underlying purpose of the 1996 Act and the *NPRM* is to ensure that all telecommunications carriers recover the cost of providing and maintaining their interconnection facilities. Resellers lack the facilities to provide interconnection and thus need not recover interconnection costs. The statute does not extend CMRS resellers any right to construct CMRS facilities. Rather, the Commission is addressing the rights of CMRS resellers to maintain their own network facilities elsewhere in these proceedings.<sup>58</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Commission should adopt its "bill and keep" proposal for LEC-CMRS interconnection, at least for end office switching and

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<sup>56</sup> 47 U.S.C. § 251(c)(2)(D).

<sup>57</sup> Cellular Resellers Association Comments at 17.

<sup>58</sup> Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, *Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408 (1994).

local termination and at least on an interim basis. Such action is consistent with the 1996 Act because it will enable both LECs and CMRS providers to recoup their costs of terminating one another's traffic and it is necessary to end the LECs' ongoing practice of imposing excessive interconnection rates on CMRS providers and denying them mutual compensation.

Respectfully Submitted,

NEW PAR

By:

A handwritten signature in black ink, appearing to read "Jay L. Birnbaum" followed by a stylized monogram or initials.

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Dated: March 25, 1996

**ATTACHMENT 1**

**ESTIMATED EFFECTS OF  
A 5-YEAR LEC-CMRS INTERIM  
BILL AND KEEP COMPENSATION PLAN**

**Declaration of Richard C. Miller -- New Par**

**March 22, 1996**

## Introduction

My name is Richard C. Miller and I am a telecommunications industry consultant for New Par. I have more than 25 years of professional experience in the telecommunications industry, first with AT&T and more recently at or on behalf of a regional bell operating company. Of particular relevance to this proceeding, I have been heavily involved in interconnection and access issues since the divestiture of AT&T.

I have served as a policy witness for LECs in a number of major state regulatory proceedings, testifying on issues such as corporate policy, competition, regulatory reform, customer needs, current technology, industry trends and the pricing of all telecommunications products and services, including carrier access charges. Further, as a LEC director and senior director of marketing, regulation and finance, I directed the development of corporate marketing and regulatory strategies, including the implementation of new state legislation in 1991, and supervised the development and introduction of numerous multi-million dollar products such as carrier access.

I have prepared this Attachment to demonstrate that, even if the Commission were to conclude that LECs would incur more than a *de minimis* amount of unrecovered interconnection costs under its proposed bill and keep rate structure (a conclusion that has been convincingly discredited in this proceeding), the Commission can adopt bill and keep as an interim measure without requiring a subsidy of CMRS interconnection. By comparing LEC historical excess earnings from CMRS interconnection arrangements with the estimated net cost of providing CMRS interconnection going forward, the following calculations show that, even if "worst case" figures are used for a 5-year interim period, the LECs would not incur *any* unrecovered costs from providing this service.

For purposes of this Attachment, I have constructed two scenarios based on historical cellular interconnection figures: (1) a "worst case" scenario from the LECs' perspective (*i.e.*, assuming higher than probable LEC costs and lower than probable LEC revenues and savings) and (2) the "most probable" scenario. In order to calculate the "worst case" figures, I used New Par's current average local switching rates in Michigan and Ohio, I doubled the average LEC interconnection cost from the Brock study, and I used a conservative estimate of the future balance of mobile-to-land versus land-to-mobile traffic. Even under this "worst case" scenario, after 5 years of utilizing bill and keep for local switching and termination the LECs would still have earned \$980 million from cellular interconnection over the life of providing cellular interconnection (*i.e.*, from 1984 thru 2001). Thus, LEC earnings would exceed their interconnection costs by a substantial margin.

In order to calculate the "most probable" figures, I used New Par's current average local switching rates in Michigan and Ohio as the going-forward rate, but I also factored in a somewhat higher historical average local switching rate. Further, I used the average LEC interconnection cost from the Brock study and a reasonable estimate of the future balance of mobile-to-land versus land-to-mobile traffic. Under the "most probable" scenario, after 5 years of utilizing bill and keep for local switching and termination the LECs would have earned \$4.1 billion from interconnection over the life of providing cellular interconnection (*i.e.*, from 1984 thru 2001).

## **SCENARIO 1 - THE "WORST CASE" (FOR LECS)**

### **Bases and Assumptions**

1. The average annual growth in LEC-CMRS interconnect minutes is:  
70% for 1984 thru 1989  
35% for 1990 thru 1994  
25% for 1995 thru 2001

These growth figures are based on a historical analysis of price-deflated revenues. Annual industry revenues are based on CTIA's Annual Survey and Study of Cellular Industry Revenues. The price deflator is the price index used by the Commission. See Jerry A. Hausman, "Competition in Cellular Markets," (Oct. 12, 1995) ("Hausman Study").

2. The split in mobile-to-land versus land-to-mobile traffic has averaged 80/20 thru 1996 and will average 80/20 for the years 1997 thru 2001. (In fact, as used in Scenario 2, this traffic split should probably average 70/30 or 60/40 for the coming 5 years.)
3. The average LEC rate for local switching elements for past years was 1.0¢/min. and for future years would have been 1.0¢/min. (*i.e.*, absent bill and keep). This rate reflects what New Par currently pays on average for local switching in Michigan and Ohio. (New Par's historic average may have been higher than this and therefore a historic figure of 1.5¢/min. is used in Scenario 2.)
4. The average LEC LRIC for local switching and termination is 0.4¢/min., *i.e.*, double the Brock Study result. See Gerald W. Brock, "Incremental Cost of Local Usage," at 3-5 (Mar. 16, 1995) ("Brock Study"). (As the Brock Study demonstrates, both past and future LRIC is probably much lower.)
5. The LECs' average cost of billing cellular carriers for interconnect charges is 0.1¢ per call. (Even if LECs are unable to realize these cost savings, it would not have a substantial impact on the net result.) The average cellular call duration is 2.25 minutes. This figure is based on New Par's average call duration.
6. Cellular carrier charges to LECs for terminating LEC-originated traffic would mirror what the LECs charge cellular carriers for terminating CMRS-originated traffic.

## **Result**

After 5 years of utilizing a bill and keep compensation plan for local switching and termination, the LECs would have still earned \$980 million from cellular interconnection over the life of providing cellular interconnection (*i.e.*, from 1984 thru 2001).

# **ESTIMATED ANNUAL VOLUMES OF CELLULAR INTERCONNECT MINUTES**

## **Total Industry Minutes in Historic Years (Before Bill and Keep)**

1996	51.56 billion
1995	41.25
1994	33.00
1993	24.44
1992	18.11
1991	13.41
1990	9.94
1989	7.36
1988	4.33
1987	2.55
1986	1.50
1985	.88
1984	<u>.52</u>
	208.85 billion

x 80% (LEC) = 167.08 billion  
x 20% (CMRS) = 1.77 billion

## **Total Industry Interim Period Minutes**

1997	64.45 billion
1998	80.57
1999	100.71
2000	125.89
2001	<u>157.36</u>
	528.98 billion
x 80% (LEC) = 423.18 billion	
x 20% (CMRS) = 105.80 billion	

## **Bases and Assumptions:**

1. 1994 annual interconnect minutes for the industry = 33 billion. This figure is based on a CTIA estimate of 1994 cellular industry minutes.
2. The average annual growth in LEC-CMRS interconnect minutes is:
  - 70% for 1984 thru 1989
  - 35% for 1990 thru 1994
  - 25% for 1995 thru 2001

These growth figures are based on a historic analysis of price-deflated revenues. See Hausman Study.

3. The current 80/20 split in mobile-to-land traffic versus land-to-mobile traffic will transition to near 50/50 in future years. *See* Sprint Spectrum/American Personal Communications Joint Comments at 3 (traffic balance is already 50/50). Retaining the above 80/20 split as the future 5-year average is extremely conservative (*i.e.*, understates the LECs' benefit from bill and keep by overstating their costs and understating their savings).

## **ESTIMATED EFFECTS OF A 5-YEAR BILL AND KEEP INTERIM PERIOD**

### **Algorithm for Calculating Interim Period Effects:**

- (1) LECs' excess earnings from cellular interconnection arrangements for the past 13 years (1984 thru 1996) *equals*:
  - (a) LEC revenues from cellular interconnection minus LEC LRIC for all past charges paid by cellular carriers, *plus*
  - (b) LEC savings realized from not paying cellular carriers for terminating all LEC-originated traffic (using the LECs' local switching rates)
- (2) *Minus* LECs' actual LRIC for the going-forward interim period for terminating cellular-originated traffic (for those network elements that are included under the bill and keep arrangement)
- (3) *Plus* the LECs' savings for the going forward-interim period:
  - (a) For not paying cellular carriers for terminating LEC-originated traffic (since this would also be included under bill and keep), *plus*
  - (b) For not incurring the costs associated with billing traffic subject to bill and keep

### **Calculations Using Estimated Annual Interconnect Minutes:**

- (1) LECs' excess earnings (1984 thru 1996):
  - (a) LEC revenues minus LEC LRIC:  
 $\text{LEC Revenues} = 167.1 \text{ billion} \times 1.0\text{¢} = \$1.67 \text{ billion}$   
 $\text{LEC LRIC} = 167.1 \text{ billion} \times 0.4\text{¢} = \$0.67 \text{ billion}$   
 $\text{LEC Revenues minus LRIC} = \$1.00 \text{ billion}$
  - (b) LEC savings from not paying mutual compensation:  
 $= 41.8 \text{ billion} \times 1.0\text{¢} = \$0.42 \text{ billion}$Total LEC excess earnings = a + b = \$1.42 billion
- (2) LECs' LRIC going forward for a 5-year interim period:  
 $= 423.2 \text{ billion} \times 0.4\text{¢} = \underline{\$1.69 \text{ billion}}$
- (3) LEC savings going forward for an interim period:
  - (a) For not paying cellular carriers for terminating traffic:  
 $= 105.8 \text{ billion} \times 1.0\text{¢} = \underline{\$1.06 \text{ billion}}$
  - (b) For not billing cellular carriers for their traffic:  
 $= 423.2 \text{ billion} \div 2.25 \text{ min./call} \times 0.1\text{¢/call} = \underline{\$0.19 \text{ billion}}$

REMAINING NET EARNINGS FOR LECs = (1) - (2) + (3) = \$0.98 billion  
(equals \$0.79 billion without LEC billing savings)

## **SCENARIO 2 - THE "MOST PROBABLE" CASE**

### **Bases and Assumptions**

1. The average annual growth in LEC-CMRS interconnect minutes is:  
70% for 1984 thru 1989  
35% for 1990 thru 1994  
25% for 1995 thru 2001

These growth figures are based on a historical analysis of price-deflated revenues. See Hausman Study.

2. The split in mobile-to-land versus land-to-mobile traffic has averaged 80/20 thru 1996 but will average 65/35 for the years 1997 thru 2001.
3. The average LEC rate for local switching elements for past years was 1.5¢/min. and for future years would have been 1.0¢/min. (*i.e.*, absent bill and keep). The 1.0¢/min. rate is based on what New Par currently pays on average for local switching in Michigan and Ohio, while the 1.5¢/min. rate for past years reflects the fact that the historic average was probably higher.
4. The average LEC LRIC for local switching and termination is 0.2¢/min. (*i.e.*, per the Brock Study). See Brock Study at 3-5.
5. The LECs' average cost of billing cellular carriers for interconnection is 0.1¢ per call. (Even if LECs are unable to realize these cost savings, it would not have a substantial impact on the net result.) The average cellular call duration is 2.25 minutes. This figure is based on New Par's average call duration.
6. Cellular carrier charges to LECs for terminating LEC-originated traffic would mirror what the LECs charge cellular carriers for terminating CMRS-originated traffic.

### **Result**

After 5 years of utilizing a bill and keep compensation plan for local switching and termination, the LECs would have still earned \$4.1 billion from cellular interconnection over the life of providing cellular interconnection (*i.e.*, from 1984 thru 2001).

**ESTIMATED ANNUAL VOLUMES  
OF CELLULAR INTERCONNECT MINUTES**

**Total Industry  
Minutes in  
Historic Years  
(Before Bill and Keep)**

1996	51.56 billion
1995	41.25
1994	33.00
1993	24.44
1992	18.11
1991	13.41
1990	9.94
1989	7.36
1988	4.33
1987	2.55
1986	1.50
1985	.88
1984	<u>.52</u>
	208.85 billion

x 80% (LEC) = 167.08 billion  
x 20% (CMRS) = 41.77 billion

**Total Industry  
Interim Period  
Minutes**

1997	64.45 billion
1998	80.57
1999	100.71
2000	125.89
2001	<u>157.36</u>
	528.98 billion
	x 65% (LEC) = 343.84 billion
	x 35% (CMRS) = 185.14 billion

**Bases and Assumptions:**

1. 1994 annual interconnect minutes for the industry = 33 billion. *See supra* p.5
2. The average annual growth in LEC-CMRS interconnect minutes is:  
70% for 1984 thru 1989  
35% for 1990 thru 1994  
25% for 1995 thru 2001

These figures are based on a historic analysis of price-deflated revenues. *See Hausman Study.*

3. The current 80/20 split in mobile-to-land traffic versus land-to-mobile traffic will transition to near 50/50 in future years. The average split over the next 5 years will be 65/35.

## **ESTIMATED EFFECTS OF A 5-YEAR BILL AND KEEP INTERIM PERIOD**

### **Algorithm for Calculation Interim Period Effects:**

- (1) LECs' excess earnings from cellular interconnection arrangements for the past 13 years (1984 thru 1996) *equals*:
  - (a) LEC revenues from cellular interconnection minus LEC LRIC for all past charges paid by cellular carriers, *plus*
  - (b) LEC savings realized from not paying cellular carriers for terminating all LEC-originated traffic (using the LECs' local switching rates)
- (2) *Minus* LECs' actual LRIC for the going-forward interim period for terminating cellular-originated traffic (for those network elements that are included under the bill and keep arrangement)
- (3) *Plus* the LECs' savings for the going-forward interim period:
  - (a) For not paying cellular carriers for terminating LEC-originated traffic (since this would also be included under bill and keep), *plus*
  - (b) For not incurring the costs associated with billing traffic subject to bill and keep

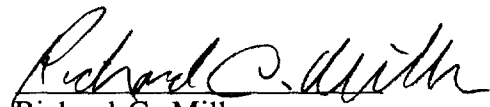
### **Calculations Using Estimated Annual Interconnect Minutes:**

- (1) LECs' excess earnings (1984 thru 1996):
  - (a) LEC revenues minus LEC LRIC:  
 $\text{LEC Revenues} = 167.1 \text{ billion} \times 1.5\text{¢} = \$2.51 \text{ billion}$   
 $\text{LEC LRIC} = 167.1 \text{ billion} \times 0.2\text{¢} = \$0.33 \text{ billion}$   
 $\text{LEC Revenues minus LRIC} = \$2.18 \text{ billion}$
  - (b) LEC savings from not paying mutual compensation:  
 $= 41.8 \text{ billion} \times 1.5\text{¢} = \$0.63 \text{ billion}$

Total LEC excess earnings = a + b = \$2.81 billion
- (2) LECs' LRIC going forward for a 5-year interim period:  
 $= 343.8 \text{ billion} \times 0.2\text{¢} = \underline{\$0.69 \text{ billion}}$
- (3) LECs' savings going forward for an interim period:
  - (a) For not paying cellular carriers for terminating traffic:  
 $= 185.1 \text{ billion} \times 1.0\text{¢} = \underline{\$1.85 \text{ billion}}$
  - (b) For not billing cellular carriers for their traffic:  
 $= 343.8 \text{ billion} \div 2.25 \text{ min./call} \times 0.1\text{¢/call} = \underline{\$0.15 \text{ billion}}$

REMAINING NET EARNINGS FOR LECs = (1) - (2) + (3) = \$4.12 billion  
(equals \$3.97 billion without LEC billing savings)

I have read the foregoing "Attachment 1" to the Reply Comments of New Par and I declare under penalty of perjury that the facts stated therein are true and correct to the best of my knowledge and belief.

A handwritten signature in cursive script, appearing to read "Richard C. Miller".

Richard C. Miller  
Telecommunications Industry  
Consultant  
New Par

Dated: 3/22/98

### CERTIFICATE OF SERVICE

I, Sally A. Watts, hereby certify that I have served the attached Reply Comments of New Par by prepaid mail on this 25th day of March, 1996, to all the parties listed below:

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